

The attached comments relating to a technical correction for the PPA are submitted on behalf of David Starr, Counsel for the Church Alliance. If you have any trouble with the attachment, please contact David Starr or Christopher Hatcher at (202) 659-8201.

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Chairman Charles Grassley
Ranking Member Max Baucus
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510
[delivery by electronic mail]

Attn: Comments on the *Tax Technical Corrections Act of 2006*

Dear Chairman Grassley and Ranking Member Baucus:

On behalf of the Church Alliance, an organization representing the church benefits programs of a wide variety of denominations, I am submitting the attached proposed technical correction to the Pension Protection Act of 2006, for consideration to be included in the Tax Technical Corrections Act of 2006.

Thank you for the opportunity to comment.

Sincerely,



David Starr
Counsel
Church Alliance

Technical Correction for PPA, Section 867

Providing Relief on Section 415 Percentage Limits for Lower Paid Participants of Church Plans

Certain defined benefit church plans provide benefit formulas that favor certain lower-paid employees/ministers. For example, some plans provide that benefits are calculated using a denomination's average wage for those who earn less than the average amount. These plans are finding that they are exceeding the tax law limitation under section 415(b) that prohibits paying benefits that exceed the average of the highest three years of compensation. The Pension Protection Act of 2006 (H.R. 4, P.L. 109-280) addresses this issue in section 867 for certain non-highly compensated participants in church plans. The enacted language of the law reads as follows:

“SEC. 867. CHURCH PLAN RULE.

(a) In General- Paragraph (11) of section 415(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“Subparagraph (B) of paragraph (1) shall not apply to a **plan maintained by an organization described in section 3121(w)(3)(A)** except with respect to highly compensated benefits. For purposes of this paragraph, the term ‘highly compensated benefits’ means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in **section 3121(w)(3)(A)**. For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.”

(b) Effective Date- The amendment made by this section shall apply to years beginning after December 31, 2006.” [emphasis added]

The JCT technical description of H.R. 4 (JCX-38-06) explains that “[t]he provision provides that the 100 percent of compensation limit does not apply to a plan **maintained by a church or qualified church controlled organization** defined in **section 3121(w)(3)(A)** except with respect to ‘highly compensated benefits’” [emphasis added].

The Church Alliance believes the Code citation that is highlighted in the text of the PPA is contrary to the JCT description and is a technical drafting error, for the following reasons:

1. The language in the bill does not reflect the description contained in the Joint Committee description. The description provides that Qualified Church

Controlled Organizations (QCCOs) were intended to be covered under the provision. The actual citation to Code section 3121(w)(3)(A) omits QCCOs.

2. The language creates a distinction between churches and certain Qualified Church Controlled Organizations (QCCOs) that exists nowhere else in the pension provisions of the Code to our knowledge. Non-QCCOs were intentionally excluded from the provision (for example, church controlled hospitals). Distinctions between churches and QCCOs on the one hand, and non-QCCOs on the other hand, have been made for church plans in several cases in the Code. However, there is no policy reason for protecting the pension benefits of lower-paid workers in a church, but not the pensions of lower-paid workers of a qualified church controlled organization (e.g., charity, church camp, mission, etc.).

We believe that the source of the technical error was that in the final drafting process for H.R. 4, Congress used language originally included in H.R. 1776 (Portman-Cardin) as introduced in the 108th Congress. Section 906 of that bill included the § 415 change, but mistakenly limited it only to churches as described in the Code section 3121(w)(3)(A). That mistake was subsequently corrected when Rep. Portman reintroduced his next version of the bill in the 109th Congress (H.R. 1960, sec. 405). Moreover, the language was also correct in S. 2193 introduced this year by Senator Hutchison.

On behalf of the Church Alliance, we urge Congress to correct this technical error in the language of section 867.

Proposed Language:

Section 867(a) of the Pension Protection Act of 2006 (P.L. 109-280) is amended by striking 'section 3121(w)(3)(A)' wherever it appears and inserting 'section 3121(w)(3)'.